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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,709	07/20/2006	William Lyle Warke	P/4675-8	8702
7590	09/30/2009		EXAMINER	
Robert C. Faber			TROUTMAN, MATTHEW D	
OSTROLENK, FABER, GERB & SOFFEN				
1180 Avenue of the Americas			ART UNIT	PAPER NUMBER
New York, NY 10036-8402			3671	
			MAIL DATE	DELIVERY MODE
			09/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/586,709	WARKE, WILLIAM LYLE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Matthew D. Troutman	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 July 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 33-52 is/are pending in the application.

4a) Of the above claim(s) 34-38 and 47-52 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 33 and 39-46 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 33, 39-41 and 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,942,674 - Ditter et al (provided by Applicant and previously presented).

Regarding claim 33, Ditter teaches:

An apparatus comprising:

A chassis (Fig. 1 – chassis of apparatus) having ground engaging means (22, 30), an adjustable working arm (arm connecting blade 32 to chassis) having a chassis engaging end movable mounted on the chassis (end of arm attached to chassis movable by 38) and a tool-engaging end (end attached to 32), means for oscillating the tool-engaging end of the adjustable working arm (Col. 3 - lines 10-12) wherein the oscillating means comprises a drive means (24) mounted on the chassis and a connecting means (Col. 3 – lines 10-12 – “eccentric connection”) mounted intermediate the drive means and the adjustable working arm, wherein the ground engaging means comprises at least one axle (axle of 22) having wheels means (22) mounted thereon, whereby in use a leading portion of a tool on the tool receiving means is disposed substantially vertically below an axis of

rotation of the axle (leading portion of 32 is disposed substantially vertically below axle of 22).

Regarding claim 39,

Wherein the tool is a turf cutting knife comprising a turf undercutting blade (32).

Regarding claim 40,

Wherein the turf undercutting blade is disposed substantially vertically below an axis of rotation of the axle (32 disposed below axis of rotation of axle of 22).

Regarding claim 41,

Wherein the turf undercutting blade is reinforced (As Applicant has not described what is intended by the term “reinforced”, the blade of Ditter is considered to be reinforced as it teaches a blade such as that shown and claimed by Applicant and is further reinforced by the multiple bolts and brackets connecting the blade to the working arm).

Regarding claim 43,

Wherein a guillotine (44) is mounted on the aft portion of the chassis of the turf cutting apparatus and is operable between an out of use position (Fig. 2) where a cutting head of the guillotine is clear of the ground and an in use position (Fig. 5)

where the cutting head slices vertically down into a strip of cut turf to produce strips of turf of a predetermined length.

Regarding claim 44,

Wherein the guillotine is operated between its two positions by guillotine drive means taken off the main turf cutting apparatus drive means (drive means shown in Fig. 2 - taken off of 24 by the "clutching feature" Col. 5 – lines 25-30).

Regarding claim 45,

Wherein the guillotine has a measuring means (204) in operable engagement with a clutch means (Col. 5 – lines 25-30 – "clutching feature"), such that when a predetermined distance has been measured by the measuring means, the clutch means couples the guillotine cutting head to the guillotine drives means to operate the guillotine between the out of use position and the in use position and back to the out of use position effecting a chopping action b the guillotine cutting head (as described in the Specification of Ditter).

Regarding claim 46,

Wherein the measuring means is a wheel (204) having wheel diameter adjustment means (206).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ditter as applied to claim 39 above, and further in view of *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Ditter discloses the claimed invention except for providing a range of turf cutting knives with brackets of different lengths to accommodate blades and/or wheels of different widths. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to include a range of turf cutting knives with brackets of different lengths, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

***Response to Arguments***

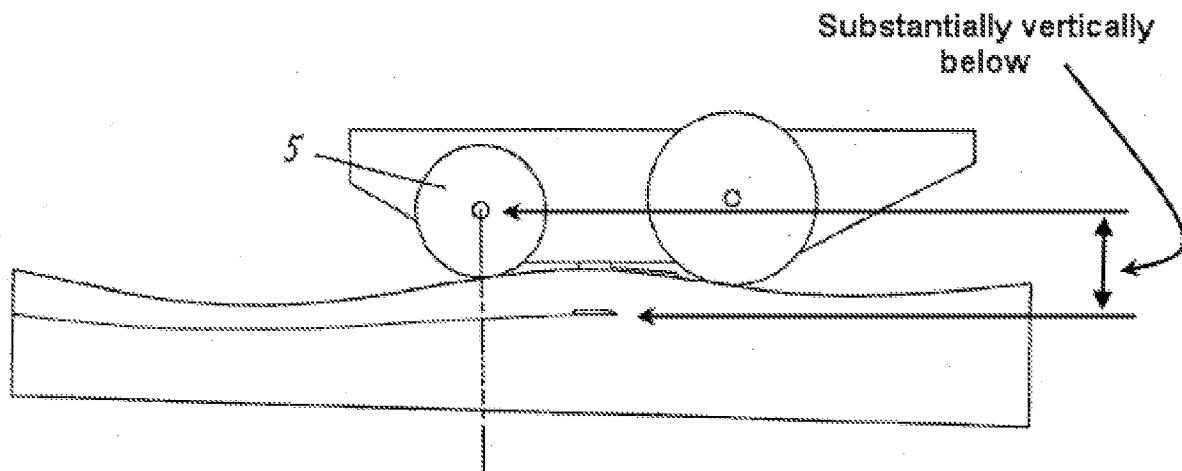
5. Applicant's arguments filed 07/23/2009 have been fully considered but they are not persuasive. Applicant argues wherein the leading portion of the blade of Ditter is not disposed "substantially vertically below" the axle of the traction roller. It appears as though Applicant's arguments are directed to a more specific configuration than what the present claim language is limited to. It appears as though Applicant is arguing that

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the claim language is limited to only the configuration wherein the leading portion of the tool is disposed substantially vertically below an axis of rotation of the axle in a vertical plane oriented perpendicular to the direction of travel, wherein the vertical plane intersects both the leading portion of the tool and the axis of rotation of the axle.

Applicant's current claim language is not directed to such a limitation. Applicant only claims wherein the leading portion of a tool is disposed "substantially vertically below an axis of rotation of the axle" which the leading portion of the tool of Ditter is. The leading portion of the tool of Ditter has to be disposed "substantially vertically below" the axis of the traction wheel if the user is going to cut a strip of sod having any amount of depth as the traction wheel rolls on the upper surface of the sod.

Applicant noted similarities in the configuration of Ditter and Figure 3 of Applicant's disclosure and therefore part of Figure 3 of Applicant's disclosure will be used for discussion:



As shown in the figure the leading portion of the tool is located substantially vertically below the axle of 5 as the phrase “substantially vertically below” does not limit the location to only being disposed in a plane as discussed above.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Troutman whose telephone number is (571)270-3654. The examiner can normally be reached on Monday through Friday 9:00am to 5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/  
Supervisory Patent Examiner  
Art Unit 3671

mdt